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§ 7801. Findings and declaration of policy

(a) Findings

Congress finds the following:

(1) Hass avocados are an integral food source in the United States that are a valuable and healthy part of the human diet and are enjoyed by millions of persons every year for a multitude of everyday and special occasions.

(2) Hass avocados are a significant tree fruit crop grown by many individual producers, but virtually all domestically produced Hass avocados for the commercial market are grown in the State of California.

(3) Hass avocados move in interstate and foreign commerce, and Hass avocados that do not move in interstate or foreign channels of commerce but only in intrastate commerce directly affect interstate commerce in Hass avocados.

(4) In recent years, large quantities of Hass avocados have been imported into the United States from other countries.

(5) The maintenance and expansion of markets in existence on October 28, 2000, and the development of new or improved markets or uses for Hass avocados are needed to preserve and strengthen the economic viability of the domestic Hass avocado industry for the benefit of producers and other persons associated with the producing, marketing, processing, and consuming of Hass avocados.

(6) An effective and coordinated program of promotion, research, industry information, and consumer information regarding Hass avocados is necessary for the maintenance, expansion, and development of domestic markets for Hass avocados.

(b) Purpose

It is the purpose of this chapter to authorize the establishment, through the exercise of the powers provided in this chapter, of an orderly procedure for the development and financing (through an adequate assessment on Hass avocados sold by producers and importers in the United States) of an effective and coordinated program of promotion, research, industry information, and consumer information, including funds for marketing and market research activities, that is designed to—

(1) strengthen the position of the Hass avocado industry in the domestic marketplace; and

(2) maintain, develop, and expand markets and uses for Hass avocados in the domestic marketplace.

(c) Limitation

Nothing in this chapter may be construed to provide for the control of production or otherwise limit the right of any person to produce, handle, or import Hass avocados.

(Pub. L. 106-387, §1(a) [title XII, §1202], Oct. 28, 2000, 114 Stat. 1549, 1549A-79.)

SHORT TITLE

Pub. L. 106-387, §1(a) [title XII, §1201], Oct. 28, 2000, 114 Stat. 1549, 1549A-79, provided that: "This title [enacting this chapter] may be cited as the 'Hass Avocado Promotion, Research, and Information Act of 2000'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7803, 7810 of this title.

§ 7802. Definitions

As used in this chapter:

(1) Board

The terms "Avocado Board" and "Board" mean the Hass Avocado Board established under section 7804 of this title.

(2) Conflict of interest

The term "conflict of interest" means a situation in which a member or employee of the Board has a direct or indirect financial interest in a person that performs a service for, or enters into a contract with, the Board for anything of economic value.

(3) Consumer information

The term "consumer information" means any action or program that provides informa-

tion to consumers and other persons on the use, nutritional attributes, and other information that will assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, and use of Hass avocados.

(4) Customs

The term “Customs” means the United States Customs Service.

(5) Department

The term “Department” means the United States Department of Agriculture.

(6) Hass avocado

(A) In general

The term “Hass avocado” includes—

(i) the fruit of any Hass variety avocado tree; and

(ii) any other type of avocado fruit that the Board, with the approval of the Secretary, determines is so similar to the Hass variety avocado as to be indistinguishable to consumers in fresh form.

(B) Form of fruit

Except as provided in subparagraph (C), the term includes avocado fruit described in subparagraph (A) whether in fresh, frozen, or any other processed form.

(C) Exceptions

In any case in which a handler further processes avocados described in subparagraph (A), or products of such avocados, for sale to a retailer, the Board, with the approval of the Secretary, may determine that such further processed products do not constitute a substantial value of the product and that, based on its determination, the product shall not be treated as a product of Hass avocados subject to assessment under the order. In addition, the Board, with the approval of the Secretary, may exempt certain frozen avocado products from assessment under the order.

(7) Handler

(A) First handler

The term “first handler” means a person operating in the Hass avocados marketing system that sells domestic or imported Hass avocados for United States domestic consumption, and who is responsible for remitting assessments to the Board. The term includes an importer or producer who sells directly to consumers Hass avocados that the importer or producer has imported into the United States or produced, respectively.

(B) Exempt handler

The term “exempt handler” means a person who would otherwise be considered a first handler, except that all avocados purchased by the person have already been subject to the assessment under section 7804(h) of this title.

(8) Importer

The term “importer” means any person who imports Hass avocados into the United States.

(9) Industry information

The term “industry information” means information and programs that are designed to

increase efficiency in processing, enhance the development of new markets and marketing strategies, increase marketing efficiency, and activities to enhance the image of Hass avocados and the Hass avocado industry domestically.

(10) Order

The term “order” means the Hass avocado promotion, research, and information order issued under this chapter.

(11) Person

The term “person” means any individual, group of individuals, firm, partnership, corporation, joint stock company, association, cooperative, or other legal entity.

(12) Producer

The term “producer” means any person who—

(A) is engaged in the domestic production of Hass avocados for commercial use; and

(B) owns, or shares the ownership and risk of loss, of such Hass avocados.

(13) Promotion

The term “promotion” means any action to advance the image, desirability, or marketability of Hass avocados, including paid advertising, sales promotion, and publicity, in order to improve the competitive position and stimulate sales of Hass avocados in the domestic marketplace.

(14) Research

The term “research” means any type of test, study, or analysis relating to market research, market development, and marketing efforts, or relating to the use, quality, or nutritional value of Hass avocados, other related food science research, or research designed to advance the image, desirability, and marketability of Hass avocados.

(15) Secretary

The term “Secretary” means the Secretary of Agriculture.

(16) State

The term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the Republic of the Marshall Islands, and the Federated States of Micronesia.

(17) United States

The term “United States” means the United States collectively.

(Pub. L. 106-387, §1(a) [title XII, §1203], Oct. 28, 2000, 114 Stat. 1549, 1549A-79.)

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of Novem-

ber 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7804, 7805 of this title.

§ 7803. Issuance of orders

(a) In general

(1) Issuance

To effectuate the policy of this chapter specified in section 7801(b) of this title, the Secretary, subject to the procedures provided in subsection (b) of this section, shall issue orders under this chapter applicable to producers, importers, and first handlers of Hass avocados.

(2) Scope

Any order shall be national in scope.

(3) One order

Not more than one order shall be in effect at any one time.

(b) Procedures

(1) Proposal for an order

An existing organization of avocado producers established pursuant to a State statute, or any other person who will be affected by this chapter, may request the issuance of, and submit a proposal for an order.

(2) Publication of proposal

The Secretary shall publish a proposed order and give notice and opportunity for public comment on the proposed order not later than 60 days after receipt by the Secretary of a proposal for an order from an existing organization of avocado producers established pursuant to a State statute, as provided in paragraph (1).

(3) Issuance of order

(A) In general

After notice and opportunity for public comment are provided in accordance with paragraph (2), the Secretary shall issue the order, taking into consideration the comments received and including in the order such provisions as are necessary to ensure that the order is in conformity with this chapter.

(B) Effective date

The order shall be issued and become effective only after an affirmative vote in a referendum as provided in section 7805 of this title, but not later than 180 days after publication of the proposed order.

(c) Amendments

The Secretary, from time to time, may amend an order. The provisions of this chapter applicable to an order shall be applicable to any amendment to an order.

(Pub. L. 106-387, §1(a) [title XII, §1204], Oct. 28, 2000, 114 Stat. 1549, 1549A-81.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7804, 7805 of this title.

§ 7804. Required terms in orders

(a) In general

An order shall contain the terms and provisions specified in this section.

(b) Hass Avocado Board

(1) Establishment and membership

(A) Establishment

The order shall provide for the establishment of a Hass Avocado Board, consisting of 12 members, to administer the order.

(B) Membership

(i) Appointment

The order shall provide that members of the Board shall be appointed by the Secretary from nominations submitted as provided in this subsection.

(ii) Composition

The Board shall consist of participating domestic producers and importers.

(C) Special definition of importer

In this subsection, the term “importer” means a person who is involved in, as a substantial activity, the importation, sale, and marketing of Hass avocados in the United States (either directly or as an agent, broker, or consignee of any person or nation that produces or handles Hass avocados outside the United States for sale in the United States), and who is subject to assessments under the order.

(2) Distribution of appointments

(A) In general

The order shall provide that the membership of the Board shall consist of the following:

(i) Seven members who are domestic producers of Hass avocados and are subject to assessments under the order.

(ii) Two members who represent importers of Hass avocados and are subject to assessments under the order.

(iii) Three members who are domestic producers of Hass avocados and are subject to assessments under the order, or are importers of Hass avocados and are subject to assessments under the order, to reflect the proportion of domestic production and imports supplying the United States market, which shall be based on the Secretary's determination of the average volume of domestic production of Hass avocados proportionate to the average volume of imports of Hass avocados in the United States over the previous 3 years.

(B) Adjustment in Board representation

Three years after the assessment of Hass avocados commences pursuant to an order, and at the end of each 3-year period thereafter, the Avocado Board shall adjust the proportion of producer representatives to importer representatives on the Board under subparagraph (A)(iii) on the basis of the amount of assessments collected from producers and importers over the immediately preceding 3-year period. Any adjustment